



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2009-0140; FRL-9901-10-Region 4]

Approval and Promulgation of Implementation Plans;

North Carolina; Removal of Stage II Gasoline Vapor Recovery Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality on September 18, 2009, for the purpose of removing Stage II vapor control requirement contingency measures for new and upgraded gasoline dispensing facilities in the State. The September 18, 2009, SIP revision also addresses several non-Stage II related rule changes. However, action on the other portions for the September 18, 2009, SIP revision is being addressed in a separate rulemaking action. EPA has determined that North Carolina's September 18, 2009, SIP revision regarding the Stage II vapor control requirements is approvable because it is consistent with the Clean Air Act (CAA or Act).

EFFECTIVE DATE: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2009-0140. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding this action, contact Ms. Kelly Sheckler, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sheckler's telephone number is (404) 562-9222; e-mail address: sheckler.kelly@epa.gov.

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I. Background

EPA, under the CAA Amendments of 1990, designated (pursuant to section 107(d)(1)) and classified certain counties in North Carolina, either in their entirety or portions thereof, as “moderate” ozone nonattainment areas for the 1-hour ozone national ambient air quality standards (NAAQS). Specifically, the Charlotte-Gastonia Area (comprised of Gaston and Mecklenburg Counties); the Greensboro-Winston-Salem-High Point Area (comprised of Davidson, Davis (partial), Forsyth and Guilford Counties); and the Raleigh-Durham Area (comprised of Durham, Granville (partial), and Wake Counties) were all designated as “moderate” ozone nonattainment areas for the 1-hour ozone NAAQS. The designations were based on the Areas’ 1-hour ozone design values for the 1987-1989 three-year period. The “moderate” classification triggered various statutory requirements for these Areas including the Stage II vapor recovery requirements pursuant to section 182(b)(3) of the CAA.

Prior to the deadline for implementing the requirements of section 182(b)(3) of the CAA, the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point and Raleigh-Durham Areas in North Carolina attained the 1-hour ozone NAAQS. North Carolina had implemented all

measures then required for moderate ozone nonattainment areas under the CAA, and with three years of data (1990-1992), demonstrated compliance with the 1-hour ozone NAAQS.

Subsequently, NC DENR submitted to EPA 1-hour ozone maintenance plans and requests for redesignation for the three moderate nonattainment areas. As part of the associated 1-hour ozone maintenance plans for these areas, North Carolina provided contingency measures that included regulation 15A North Carolina Administrative Code (NCAC) 02D.0953 (hereafter referred to as rule .0953), entitled *Vapor Return Piping for Stage II Vapor Recovery*, for all new or improved gasoline tanks, and 15A NCAC 02D.0954 (hereafter referred to as rule .0954), entitled *Stage II Vapor Recovery*. These contingency measures were never activated as the Areas all continued to attain the 1-hour ozone NAAQS. EPA approved the redesignation requests and the maintenance plans for the Charlotte-Gastonia Area on July 5, 1995 (60 FR 34859), the Greensboro-Winston-Salem-High Point Area on September 9, 1993 (58 FR 47391), and the Raleigh-Durham Area on April 18, 1994 (59 FR 18300).

On September 18, 2009, NC DENR submitted a SIP revision to remove Stage II vapor control contingency measure requirements from the 1-hour maintenance plans for the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point, and Raleigh-Durham Areas. In addition, the removal of rules .0953 and .0954 necessitated amendments of rules 15A NCAC 02D.0902(d)—*Applicability* (hereafter referred to as rule .0902(d)), 15A NCAC 02D.0909—*Compliance schedules for Sources in new nonattainment Areas* (hereafter referred to as rule .0909), and 15A NCAC 02D.0952—*Petitions for Alternative Controls for RACT* (hereafter referred to as rule

.0952) in North Carolina's SIP.¹ Accordingly, NC DENR's September 18, 2009, SIP revision also changes rules .0902(d), .0909, and .0952 to remove subparagraphs referencing the repealed Stage II rules .0953 and .0954.

On June 7, 2013, EPA published a proposed rulemaking to approve North Carolina's September 18, 2009, SIP revision related to Stage II. Detailed background for today's final rulemaking can be found in EPA's June 7, 2013, proposed rulemaking. *See* 78 FR 34303. The comment period for this proposed rulemaking closed on July 8, 2013. EPA did not receive any comments, adverse or otherwise, during the public comment period.

II. Final Action

EPA is taking final action to approve the SIP revision submitted by North Carolina for the purpose of removing Stage II vapor control contingency measure requirements for new and upgraded gasoline dispensing facilities in the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point, and Raleigh-Durham Areas. Specifically, this action removes Stage II rules .0953 and .0954 from the North Carolina SIP, and amends rules .0902(d), .0909, and .0952 to reflect the removal of rules .0953 and .0954 in the State's implementation plan. EPA has determined that North Carolina's September 18, 2009, SIP revision related to the State's Stage II rules is consistent with the CAA and EPA's regulations and guidance.

¹ North Carolina's SIP revision also make changes to Rule 15A NCAC 02Q.0102—*Activities Exempted from permit requirements regarding New Source Performance Standards* and Rule 15A NCAC 02D.1110—*National Emission Standards for Hazardous Air Pollutants*. EPA is not taking action in today's action to approve these changes and these rules are not currently part of North Carolina's federally-approved SIP.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 29, 2013

Beverly H. Banister

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart II – North Carolina

2. Section 52.1770(c), under Table 1, is amended by revising the entries for “.0902,” “.0909,” “.0952,” “.0953,” and “.0954” to read as follows:

§52.1770 Identification of plan.

* * * *

(c) * * *

Table 1 – EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
.0900 Volatile Organic Compounds				
**	**	*	*	*
Sect .0902	Applicability	5/1/2013	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	This approval does not include the start-up shutdown language as described in Section II. A. a. of EPA’s 3/13/2013 proposed rule (78 FR 15895)
**	**	*	*	*

Sect .0909	Compliance Schedules	5/1/2013	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
**	**	*	*	*
Sect .0952	Petitions for Alternative Controls for RACT	9/18/2009	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
Sect .0953	Vapor Return Piping for Stage II Vapor Recovery	9/18/2009	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	This rule has been repealed as state effective 9/18/2009.
Sect .0954	Stage II Vapor Recovery	9/18/2009	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	This rule has been repealed as state effective 9/18/2009.
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[FR Doc. 2013-22965 Filed 09/20/2013 at 8:45 am; Publication Date: 09/23/2013]